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ABSTRACT

A number of relevant issues surround the arguments of both opponents and proponents of the Federal Trade Commission's proposals to ban or control certain advertising during children's television programs. Groups against regulatory action point out that parents, not children, are the consumers and have a right to free choice in their purchases. Likewise, advertisers assert that such discrimination violates their freedom of expression, and the television industry claims financial damage. Others suggest that children's programming would be limited severely or even eliminated by such action. Proregulatory arguments concentrate on protecting children and rely for support on studies that have explored the effects of media on children. While both groups lobby intensively for a total political solution to the problem, it appears that public sentiment favors a more moderate approach, possibly greater media emphasis on nutrition education. (MAI)

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FREEDOM OF INFORMATION CENTER REPORT NO. 398

THE CHILDREN'S ADVERTISING BATTLE

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How Do You Spell 'Relief'?

Only half the world's adult population can identify a picture of their national leader, a recent study revealed (Los Angeles Times, 3-12-78); yet 90 percent of American 3-year-olds can identify Fred Flintstone, the popular cartoon character and salesman for numerous children's products. Another poll showed (Des Moines Register, 12-11-77) that Ronald McDonald, pitchman for McDonald's hamburgers, is better known to children than Santa Claus.

Also illustrative of the impact of television advertising on children is the experience of a third-grade teacher in Connecticut. When she gave her students a spelling quiz containing the word "relief," more than half of them spelled (Los Angeles Times, 3-12-78) it "R-O-L-A-I-D-S."

But perhaps the classic story in this genre concerns the Jan. 1, 1965, broadcast of the "Soupy Sales Show." During that program, Sales urged his young viewers to locate the wallets of their sleeping fathers, take out "some of those funny green pieces of paper with those nice pictures of George Washington, Abraham Lincoln and Alexander Hamilton, and send them to your old pal, Soupy, care of WNEW, New York." According to one advertising executive, the children sent enough money to constitute "the biggest heist since the Boston Brinks' robbery."¹

Introduction

These stories and others like them are frequently repeated by consumer advocates to support their claims that programming and advertising directed at children should be more closely scrutinized by parents and the government. Because, they claim, young children are often unable to distinguish between fact and fantasy or between programming and advertising, commercial messages directed toward them are inherently deceptive. The most serious danger, they state, is that the majority of these advertisements urge children to consume products, especially heavily sugared foods, that may be hazardous to their health.

Spokesmen for the industries that make products for children, on the other hand, argue that no harm is done by their

advertisements, because the persons who make the decisions on whether to buy certain products are not children but their parents. It is parents who have the ultimate responsibility to supervise their families' diets, these spokesmen say, and parents have sufficient intelligence and information to balance the pros and cons of eating pre-sweetened products.

The conflict between these two points of view reached a head when two consumer groups, Action for Children's Television and the Center for Science in the Public Interest, petitioned the Federal Trade Commission to pass regulations that would eliminate abuses from television advertising aimed at children.

The thrust of both petitions was (Des Moines Register, 12-11-77) that television ads encourage children to eat sugared products and that too much sugar leads to tooth decay, obesity and other diseases. The ACT petition contained specific complaints against the makers of Cocoa Pebbles, Cookie Crisps, Charleston Chews and other sugared snacks. The CSPI petition, broader in scope, called for a ban on the advertising of any snack food containing added sugar and for the disclosure of health dangers for all products in which added sugar constitutes 10 percent or more of the food's caloric content. These sanctions, both petitions agreed, should apply to television shows having an audience of 60 percent or more children.

After studying both petitions, Tracy Westen, deputy director of the FTC's Bureau of Consumer Protection, said (New York Times, 1-1-78) that his staff members had gone beyond the petitions and were examining the entire problem of advertising to young children in general. The recommendations of that study, released on Feb. 27, 1978, agreed (Washington Post, 2-25-78) with the ACT and CSPI petitions but went even further. "It is both unfair and deceptive . . . to address televised advertising for any product to young children who are still too young to understand the selling purposes of, or otherwise comprehend or evaluate, the advertising," the report said. Specifically, the report recommended that the FTC adopt the following regulations:

- (a) Ban all televised advertising for any product which is directed to, or seen by, audiences composed of a significant proportion of children [below the age of 8] who are too young to understand the selling purpose of, or other-

Summary:

Cap'n Crunch meets the FTC this month, as hearings begin on a proposal to limit television advertising directed at children. Included in this report are the major arguments expected to be advanced by both pro- and anti-regulation groups in what many observers consider the most controversial proceeding ever undertaken by a regulatory agency.

wise comprehend or evaluate, the advertising;

- (b) Ban televised advertising directed to, or seen by, audiences composed of a significant number of older children [8 to 11 years old] for sugared products, the consumption of which poses the most serious dental health risks;
- (c) Require that televised advertising directed to, or seen by, audiences composed of a significant proportion of older children for sugared products not included in paragraph (b) be balanced by nutritional and/or health disclosures funded by advertisers.²

Public hearings on those proposals, predicted to be "the most controversial F.T.C. proceeding in history," are scheduled (New York Times, 8-8-78) for January 1979 in Washington, D.C. The debate probably will focus on the following questions, and the resolution of these questions could have far-reaching implications beyond determining what type of commercials American children will watch with their Saturday morning cartoons.

To Eat or Not to Eat Sweets?

In 1977, the average American child between the ages of 2 and 11 watched 3½ hours of television each day, more time than those of school age spent attending classes that year.³ In so doing, that average child watched 20,000 commercials. According to varying reports, the annual expenditure for advertising directed at children is \$200 million,⁴ \$400 million,⁵ \$500 million (Los Angeles Times, 3-12-78) or \$600 million (Milwaukee Journal, 4-27-78).

Whatever the figure, most surveys agree that more than half of these funds are spent to advertise sugared products. One survey conducted by the FTC staff showed that approximately 75 percent of food commercials promote sugared products.⁶ A large proportion of these ads are (Boston Globe, 3-20-78) for ready-to-eat cereals that range in sugar content from 25 percent (Super Sugar Chex) to 68 percent (Super Orange Crisp). Another study revealed that in the first nine months of 1975, there were only four commercials during weekend daytime programming for meats, fish, poultry, cheese, vegetables, eggs and dairy products — compared to 3,832 for cereals, 1,627 for candy and gum, 841 for cookies and crackers, 582 for noncarbonated fruit drinks, 80 for desserts, and 104 for cakes, pies and pastries.⁷

As nutritionist Jean Mayer, president of Tufts University, notes (Milwaukee Journal, 6-7-78), "The plain fact is that the foods advertised the most are among the least useful, nutritionally speaking."

The preponderance of "sugar-coated" ads, the staff report said, "is distorting nutritional habits, negating what little nutrition education takes place in the schools, and undermining the authority of parents in their own homes on matters of nutrition."⁸

The principal reason for concern about the amount of advertising for sugared food, the report states, is that sugar causes tooth decay and tooth decay is "pandemic" in the United States. Partly because each American now consumes about 126 pounds of sugar each year, only one in 160 has a full set of undecayed teeth. In 1960, when the last comprehensive

federal survey was conducted, 20 million Americans were missing all their natural teeth.⁹ Each year, Americans spend (Des Moines Register, 12-11-77) about \$7.5 billion on dental services, and about half of that amount is spent to repair decayed teeth.

However, the FTC staff report also notes that the manner in which sugared food is consumed may be more dangerous than the amount consumed, "with repeated between-meal snacking on candies, pastries and other foods that stick to the teeth or are retained in the mouth evidently being the most dangerous pattern."¹⁰

In fact, cereal manufacturers have rushed to defend their products precisely because of this qualification. General Mills group vice president Arthur R. Schulze, for example, has said that only about 15 percent of sugar intake is harmful, mainly the sugar in candies, chewing gum, pies and jams. As he explains it, sugar in these products sticks to teeth and is not washed out by milk as breakfast cereals are.¹¹

The Kellogg Company of Battle Creek, Mich., which has taken the industry lead in countering the ACT and CSPI petitions despite the fact that none of its products were mentioned in either petition, agrees (Des Moines Register, 12-11-77) that sugared cereals have gotten a bum rap. Besides the fact that the sugar in pre-sweetened cereal is washed away by milk, the company says, these cereals do not contain an inordinate amount of sugar compared to other products that are normally considered more wholesome. In a petition to the FTC, Kellogg notes that an apple or a white grapefruit contains 17 grams of sugar per serving, compared to 16 grams per serving of Kellogg Sugar Smacks and only 2 grams per serving of Kellogg Corn Flakes.

The company also states that a serving of cereal and milk provides 25 percent of the U.S. recommended daily allowance for eight vitamins and 10 percent of the recommended allowance for iron. Furthermore, the petition says that Kellogg's ads encourage children to eat breakfast, a meal many dietitians consider to be the most important of the day. It cites studies showing that persons who eat ready-to-eat cereals are much less likely to miss breakfast than those who don't.

In any case, the Cereal Institute says (Los Angeles Times, 3-12-78) that although the FTC proposals "may have been designed to discourage sugar consumption by children, they might have little, if any, effect because most children add sugar to nonpresweetened cereals."

Should Children Be Treated as Consumers?

In recommending severe limitations on television advertising to children, one of the FTC's major premises is that such advertising is "unfair and deceptive" within the meaning of the FTC Act because young children cannot understand the advertisements' selling purpose.¹² The youngest TV viewers, the report says, may even think that cartoon salesmen are real people inside the television set. Many older children cannot distinguish between advertising and programming — a fact exploited, critics claim, by advertisers who echo themes from programming in their commercials. Those children who can distinguish between advertising and commercials, the report continues, "tend to explain that the difference is that commercials are 'shorter,' or 'more funny,' or to point to some other superficial distinction."¹³

Because of children's naivete, "the purpose of televised advertising is inherently beyond the child's comprehension"; thus, "an advertisement to a child has the quality of an order, not a suggestion."¹⁴

Industry opponents of the staff report argue that the effects of advertising on children are, or should be, immaterial since

parents make the ultimate decisions about what foods they will buy for their children. Karen Hartenberger, hired by the National Association of Broadcasters to lobby against the FTC staff report, objects (*Miami Herald*, 6-5-78) to the proposed ban on advertisements to children under 8 on the grounds that few of these children ever make purchases themselves. "Even the older children up to 12," she added, "have to get money from somewhere."

Although children are not the ultimate consumers, the staff report contends, the effect of directing advertising toward them is to make them into "very successful naggers. . . . [T]he child is unwittingly turned into an assistant salesman. He sells, he nags, until he breaks down the sales resistance of his parent."¹⁵

Regulation is needed, the report says, because conflicts over purchasing decisions put a strain on the parent-child relationship. Dr. Sidney Berman, former president of the American Academy of Child Psychiatry, says the academy is "deeply concerned with the exploitation of children" for advertising purposes because it "encourages confrontation and alienation on the part of children toward their parents and undermines the parents' child rearing responsibilities."¹⁶

Perhaps no section of the FTC staff report has drawn more fire from outside observers than this one. If anything, critics claim, the FTC, not television advertising, is meddling in the parent-child relationship. James Kilpatrick writes (*Washington Star*, 5-16-78):

Something has gone woefully awry, or so it seems to me, when the whole might and majesty of the federal government is marshaled to smash the insidious cupcake.

In my own old-fashioned view, it simply is no business of the federal government if children nag their parents, or parents capitulate to their howling brats. The federal authority has no writ to cure every imperfection in society. Some obligations ought to be left to individuals, for good or ill, if personal responsibility is not to be fatally undermined.

An editorial in the *Milwaukee Journal* (3-31-78) agrees with Kilpatrick: "It's highly debatable whether commercials per se harm children. . . . Parental common sense and fortitude remain the best protection for children." So does (*Boston Globe*, 3-9-78) George Will, who says,

Actually, the average child is much improved by occasional confrontation and alienation. And speaking of child-rearing responsibilities, the FTC has none.

Regarding television, diet and many other matters, the principal hazard to children is foolish parents. . . . [C]avities are less harmful to the nation than is the FTC's premise, which is the "helplessness" of parents.

FTC Chairman Michael Pertschuk has (*Los Angeles Times*, 3-12-78) an answer to these arguments. "The question raised by industry — what gives government the right to interfere in the parent-child relationship? — is the wrong one," he says.

The right question is, at what age do we as a society permit manufacturers with their sophisticated advertising techniques to intervene in that relationship? When do we as a society tell advertisers that they can go after our kids?

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To others, the argument over who or what is interfering in familial decision-making is a specious one. The FTC has no mandate over such problems, and its study of children's advertising is an inquiry into unfair trade practices, not American sociology. "Any advertisement directed to any audience which is unfair or deceptive to that audience is a violation of Section Five of the FTC Act," says (*Miami Herald*, 6-5-78) Ellis Ratner, the FTC's chief staffer in the investigation.

It's that simple.

The fact that in certain cases parents may intervene to either correct misinformation conveyed to the child or resist entreaties for product purchases is immaterial to the question of whether the law has been violated.

Offering a similar argument is (*Los Angeles Times*, 3-21-78) columnist Ellen Goodman, who ascribes criticism of the FTC investigation to "indiscriminate antigovernment mania."

. . . It isn't a question of Washington usurping parental responsibility for the care of kids' diets. It is simply a matter of unfair trade practices. . . .

The fact that I as an individual parent have the power to forbid a single Frankenberry from ever darkening my door is irrelevant. The FTC has to rule on whether advertising the Purple Peril of the breakfast table is unfair or injurious.

In the meantime, our Big Government phobia casts advertisers, of all people, in the role of beleaguered defenders of private enterprise, free choice, etc. I personally cannot imagine awarding a white hat to anyone whose major goal in life is figuring out newer and better ways of manipulating naive kids into eating junk.

Wouldn't an Ad Ban Violate the First Amendment?

Closely allied with the argument over interference with parents' freedom of choice is the question of interference with advertisers' freedom of expression. Discussing the recommendation for "counter commercials," Peter W. Allport, president of the Association of National Advertisers, asks, "Does the FTC — the government — have the power to tell people what to say?"¹⁷ Speaking for the NAB, President Vincent T. Wasilewski says (*Los Angeles Times*, 3-12-78), "We believe the First Amendment clearly guarantees the rights of free speech in these matters. The government should not assume the role of scriptwriter for the media."

The argument that limitations on children's advertising could be a dangerous step toward destruction of press freedom is succinctly stated in a *Milwaukee Journal* (3-31-78) editorial:

Such abridgement [of an advertiser's right to promote legal products] would set a fearsome precedent for all forms of expression. . . .

[I]t would represent encroachment on the First Amendment. And after bans on children's ads, what next? Already one consumer group wants the FTC to ban advertisements for high-fat foods, such as hamburgers and ice cream.

When government begins to censor the air waves

in this manner, divining which messages are good and which are harmful, there is no logical limit to potential intervention.

James Kilpatrick warns (*Washington Star*, 5-16-78) that "once government becomes the one great nanny of us all . . . once we surrender to the idiot notion that Big Brother knows best, we have abandoned the basis of a free society. The fabric rots."

To supporters of the FTC proposals, the special nature of children and the special power of television warrant some abridgment of advertisers' freedom of speech. "We're not saying that it's wrong to sell a cookie-like breakfast cereal called Cookie Crisps," says ACT President Peggy Charren. "We're saying it's wrong to sell it to young children on TV."¹⁸

The FTC staff report backs up this argument by citing recent First Amendment cases concerning advertising, noting that its recommendations constitute

. . . a special case within a special case. First, it involves children, who have always been recognized as a special class of persons under the law. Second, it involves commercial speech, which has also been recognized as a special class of speech under the law — distinct from political speech.¹⁹

Although recent cases such as *Virginia Board of Pharmacy v. Virginia Consumers Council* and *Bates v. State Bar of Arizona* have extended First Amendment protection to certain types of commercial speech, the report says, television advertising to children is different in several respects. For instance, the proposed regulations do not place a blanket ban on advertising, as in *Virginia Board*. Rather, they propose partial restrictions as to time, place and manner. Also, the proposals concern broadcast advertising, not print; and, as the Supreme Court noted in the *Bates* case, "the special problems of the broadcast media . . . warrant special consideration."²⁰

Ban the Ad or Ban the Product?

Another complaint voiced by advertisers, which is closely related to the First Amendment issue, is that an ad ban would not address the root of the problem and that it would unfairly discriminate against the television industry. The real way to deal with a potentially harmful product, writes Donald Dunn, is "to require the manufacturer or marketer to remove the danger from the product or the product itself from the marketplace."²¹ He compares the FTC's proposed ban on "sugar-coated" ads with the 1971 ban on cigarette advertising. Since that ban went into effect, sales have risen from 520 billion cigarettes per year to more than 660 billion. Rather than slowing cigarette consumption, he says, the ban unfairly benefited print media at the expense of the broadcasting industry.

Spokesmen for the television networks agree. "The growing philosophy that somehow television can be used to solve troublesome health or social problems must be countered with common sense and forceful explanations of economic realities," says (*New York Times*, 8-8-78) Everett H. Erlick, senior vice president of ABC. The president of ABC, Elton Rule, is equally disturbed. "If products are proven to be harmful — which these haven't been — they should be banned altogether. If advertising restrictions are needed — which haven't been shown — they should be applied even-

handedly and across-the-board, not just in broadcasting." Adds Gene Jankowski, president of CBS broadcast group, "If it's legal to sell it, it should be legal to advertise it."

Once again, supporters of the proposed ban point to the special nature of children and the special power of television. As one columnist writes (*Boston Globe*, 3-20-78), "Print advertising is self-limiting. You have to be able to read. But TV goes to young children who may not know the difference between reality and illusion."

Could Less Drastic Measures Solve the Problem?

In addition to their other complaints about the FTC proposals, industry spokesmen say that a total ban on advertising to young children is a classic case of regulatory overkill. If abuses exist, they say, the industry can police itself and correct them. NAB President Wasilewski says (*Washington Post*, 2-25-78) that his association's Television Code, "which includes specific guidelines for toy, snack food and cereal advertising is the 'viable mechanism' to monitor ads and set standards."

Broadcasters are not the only group who feels that the FTC has overstepped its authority. Congressional opponents such as Sen. Lowell Weicker, R-Conn., and Rep. Mark Andrews, R-N.D., maintain (*Christian Science Monitor*, 5-8-78) that if regulation of sugared foods is needed, such regulation should be implemented by the Food and Drug Administration.

The present push for reform of television advertising is not the first, and in the past self-regulation has proven effective. As Richard Zoglin writes (*New York Times*, 1-1-78), "Amidst the present clamor for reform, it is easy to overlook the fact that children's commercials have improved in the last few years — largely in response to pressure from groups like ACT and the threat of regulatory action." He notes that public service nutrition announcements are now "sprinkled among the Saturday morning cartoons" and that the Television Code requires cereal commercials to indicate that the products should be eaten as "part of a balanced breakfast."

While appreciating these reforms, consumer advocates feel that they do not go far enough. ACT President Charren is especially displeased with the "balanced breakfast" disclaimer. "When they say that Cocoa Pebbles is part of a balanced breakfast," she says (*New York Times*, 1-1-78), "it sounds like to have a balanced breakfast, you need to eat Cocoa Pebbles. It's almost worse than having no disclaimer at all."

Although the FTC staff report does not address the issue of self-regulation or alternative solutions directly, its concluding recommendation does not seem likely to promote a compromise solution:

As we have noted, television advertising for any product directed to children who are too young to appreciate [its] selling purpose . . . is inherently unfair and deceptive. It is hard to envisage any remedy short of a ban adequate to cure this inherent unfairness and deceptiveness.²²

However, when they take final action, the FTC commissioners will not be bound by the recommendations of the staff report. Anti-regulation forces were heartened by the recent appointment of Robert Pitofsky, a Georgetown professor and a respected legal scholar, as the fifth FTC commissioner. In testimony before Senate commerce committee members, Pitofsky said that "he sees little possibility courts will uphold an ad ban unless there is a showing that no lesser remedy is possible."²³ An unidentified FTC source said (*New York Times*, 3-12-78):

Each part of the rule comes down like a ton of bricks. There is an enormous sensitivity to bans, and properly so. The commissioners are right in wanting to be certain there is no other way to do it. Even those who support a ban are uncomfortable about it.

And FTC Chairman Pertschuk said, "The commission has not in any way committed itself to a ban."²⁴

For those who still hold the hope that industry can improve children's programming and advertising without governmental interference, the boldest, most imaginative proposal is that offered by Quaker Oats President Kenneth Mason. When the FTC probe began, Mason, breaking ranks with the other industry spokesmen, urged a "full inquiry" into children's advertising and said that any reasonable person who watched Saturday morning programming would recognize the need for fundamental change.²⁵

At the time, he urged the FTC to seek improvement through public broadcasting and leave commercial television alone. Recently, however, he told an American Association of Advertising Agencies audience that this solution implies that "only non-profit institutions in our society can serve the public interest. That's an implication I don't think business should accept."²⁶

Instead of leaving the job to public broadcasting, Mason called on the networks to pool their resources and produce shows of "outstanding intellectual and artistic quality" that would be supported by clustered advertising during clearly identified intermission periods. Under the plan, each network would produce 10 three-hour programs that would be simulcast on all three networks. Advertising intermissions would be preceded by lead-ins that would clearly identify "the upcoming messages as advertising" and provide "a balanced view of the product category if one is required."²⁷

Peter Nelson, executive vice president of Needham, Harper and Steers, which is a major sponsor of children's programming through its McDonald's account, says, "I think it's a provocative and interesting proposal. Of course it's easy to start jumping all over the problems. But if people got involved and supported the ideas without losing sight of the over-all objectives, it could be a very positive step."²⁸

Will Kids' Shows Disappear if the Ad Ban Succeeds?

An infrequently asked, but significant, question is: What will happen to child-oriented television if child-oriented advertising is outlawed by the FTC? Although the consumerists' petitions and the FTC staff report document the dangers of such advertising, they do not recommend specific means of alternative funding for children's shows.

Unless the ban is defeated or an alternate proposal such as Mason's is approved, the American tradition of Saturday morning cartoons could disappear along with ads for Cap'n Crunch and Sugar Frosted Flakes. That, at least, is the warning of two men who head Filmation Studios, a major producer of children's television shows. Norman Prescott and Lou Scheimer say flatly (*Christian Science Monitor*, 6-14-78) that "if current commercials are banned, kids shows will disappear." Instead, they predict, Saturday morning network programming will feature "ancient movies and reruns of reruns of defunct prime time series. . . . Eventually, cable TV or pay TV of some kind will provide the right kind of kid shows."

Will the Issue Be Decided by Political Maneuvering?

While pro and anti ad ban lawyers debate their cases, the

fate of the FTC proceedings may be determined by politics. Ever since the release of the controversial staff report, the issue has been the subject of unusually intense lobbying, not only from consumer groups, food manufacturers and broadcasters; but also from senators, representatives, their wives, judges and even President Carter.

The maneuvering began (*Christian Science Monitor*, 5-8-78) last May, when funds for the FTC investigation were threatened by a House subcommittee vote. An amendment to the FTC's appropriation bill for 1979 sought to deny funds for any FTC regulatory efforts that would affect any product considered to be safe by the FDA.

Opponents of the amendment included (*Miami Herald*, 6-5-78) a broad coalition of consumers' groups and an ad hoc group of eight congressmen's wives, who urged the full committee to "let the FTC conduct its inquiry. It may help us raise wiser, healthier children." Leading the amendment supporters, who included advertising and broadcasting associations, was Sen. Weicker, the ranking Republican on the Senate appropriations subcommittee. Weicker questioned the need for \$703,000 and 15 staffers to complete the investigation. "Is the federal government going to become the national nanny?" he asked.

However, when the bill reached the full Appropriations Committee, further amendments were added that left proponents on both sides of the controversy somewhat confused but claiming victory for their respective camps nonetheless. In essence, the cumulative effect of the new amendments was to allow the FTC to continue the "investigatory, comment and hearing stages" of its proceedings, but to prohibit it from issuing a final rule during fiscal 1979.²⁹

Meanwhile, a much more serious threat to the FTC's regulatory powers was brewing. Led by Democratic Rep. Elliott H. Levitas of Georgia, a group of congressmen sought to force action on the FTC Improvements Bill, which carried a rider that would allow either branch of Congress to veto any rule adopted by the FTC.³⁰

That move brought President Carter into the thick of the battle. In a special message to Congress,

. . . Carter warned . . . that efforts to impose this kind of close congressional scrutiny would undercut the ability of regulatory agencies to operate free of political interference, hinder the efficient operations of the executive departments and circumscribe the President's constitutional right to participate in the legislative process through the use of his veto power.³¹

Rather than allow the improvements bill to reach the president, White House and FTC forces were content to let it languish in a Senate-House conference committee.³²

Although the political maneuvering up to this point yielded mixed results for both sides, a recent decision by Federal Judge Gerhard A. Gesell was a clear victory for anti-regulation forces. Responding to complaints from a coalition of advertising associations, Gesell barred FTC Chairman Pertschuk from participating further in the children's advertising investigation, on the grounds that he had "conclusively prejudged" key factual issues.³³ Because Commissioner Pitofsky had previously disqualified himself due to a previous connection with one of the petitioning consumers' groups, only three commissioners remain eligible to complete the proceedings.

With this success behind them, the ad industry group, joined by the NAB, submitted a series of new requests to Judge Gesell and the FTC. The coalition asked Gesell to determine whether FTC procedural rules place such heavy burdens on witnesses that many advertising agencies will choose to stay away from the hearings. Specifically, they attacked the FTC's "hidden subpoena" rule, which requires each witness to disclose the results of all studies he has conducted concerning children's advertising, whether or not they support the witness' position. On this and other procedural challenges, Gesell ruled that he had no grounds to stop the hearings from proceeding.³⁴

The industry group also filed motions asking the FTC to start its investigation over again on the grounds that it had been "tainted" by Chairman Pertschuk's participation. That suggestion was unanimously rejected by the three sitting commissioners.³⁵

Meanwhile, as the anti-regulation forces seemed to have exhausted their supply of maneuvers to block the January hearings, ACT designated Nov. 14-21 as Ad Watch Week. During that week members were asked to watch one hour of children's shows and write the FTC about their reactions. The effort will coordinate with letter-writing campaigns organized by a coalition of other ad ban supporters.³⁶

Conclusion

As in other issues that are hotly contested by competing special interest groups, it is possible that the elusive "public sentiment" has been lost in the shuffle. One indication of how the average citizen feels about regulating advertising to chil-

dren can be gleaned from a recent *Woman's Day* study of family food habits.³⁷

In that study, 36 percent of the parents interviewed said they thought television advertising to children was "a major barrier to good nutrition," and 60 percent were in favor of stopping advertising to children even if it reduced the amount of children's programming. However, 71 percent agreed with the statement, "There's too much talk these days about what's good and what's bad for you when it comes to food."

Whatever American consumers want, and despite the intense differences of opinion on the subject of children's advertisers, few observers seem willing to predict what type of rule the FTC commissioners will finally adopt.

They might accept the staff recommendations for a total ban on advertising to younger children and limitations on advertising to older ones; they might pass no regulations at all; and they might enact a compromise alternative, such as limiting the number of ads aimed at children or requiring advertisers to include more nutritional information in their commercials.

There are indications that at least the more moderate supporters in each camp would welcome something less than a total victory for either side. Recently, for example, the Agriculture Department announced that it would accept bids from advertising agencies to prepare a pilot program for a mass media nutrition education campaign. The announcement drew more than 200 inquiries. A bidders' meeting was attended by representatives of 70 organizations.³⁸ And the FTC's Tracy Westen probably speaks for the moderate pro-regulation forces when he says (*Los Angeles Times*, 3-12-78), "At the very least, I think we will have more nutritional information, so children will hear both sides and know there are consequences to the consumption of sugar. Even if that's all that comes out, it will be a major gain."

FOOTNOTES

1. "Federal Trade Commission Staff Report on TV Advertising to Children," *Advertising Age*, 27 February 1978, p. 74.
2. *Ibid.*
3. *Ibid.*
4. Donald Dunn, "If the product is the problem, do you censor the ads?" *Business Week*, 3 April 1978, p. 90.
5. "Federal Trade Commission," p. 74.
6. *Ibid.*
7. *Ibid.*, p. 75.
8. *Ibid.*
9. *Ibid.*, p. 74.
10. *Ibid.*
11. Richard L. Gordon, "We're not like 'sticky' sweets, cereal marketers inform FTC," *Advertising Age*, 28 November 1977, p. 1.
12. "Federal Trade Commission," p. 74.
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*
16. *Ibid.*
17. Dunn, "If the product is the problem," p. 90.
18. *Ibid.*
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20. *Ibid.*
21. Dunn, "If the product is the problem," p. 90.

22. "Federal Trade Commission," p. 77.
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